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12 Trustee in Bankruptcy

13 UNITED STATES BANKRUPTCY COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 In re

17 EVANDER FRANK KANE,
18 Debtor.

19 FRED HJELMESET,
20 Trustee in Bankruptcy,

21 Plaintiff,

22 v.

23 SURE SPORTS LLC, FKA SURE SPORTS
24 LENDING LLC,

25 Defendant.

Case No. 21-50028 SLJ
Chapter 7
Hon. Stephen L. Johnson

Adversary Proceeding No. 22-05033 SLJ

**PARTIES' JOINT CASE MANAGEMENT
STATEMENT**

Date: May 28, 2023
Time: 1:30 p.m.
Place: Via Zoom Video Conference

PARTIES' JOINT CASE MANAGEMENT STATEMENT

1 The parties to this case, by and through their respective counsel, jointly submit this Status
2 Conference Report and Proposed Scheduling Order:

3 **I. RULE 26(F) CONFERENCE**

4 Pursuant to Rule 26(f), the parties held a meeting on February 1, 2023, which was attended by
5 the following attorneys: George Chikovani for Plaintiff Fred Hjelmset; Alan Wilmot and Tom Geher
6 for Defendant Sure Sports LLC.

7 **II. SUBJECTS AND NATURE OF DISCOVERY**

8 The Parties request that discovery commence as soon as the Court issues its ruling on Sure
9 Sports' currently pending motion regarding the Court's authority to enter final judgment and request
10 for jury trial on Plaintiff's First Cause of Action.

11 **A. RULE 26(a)(1) INITIAL DISCLOSURES**

12 The parties exchanged the initial discovery disclosures required by Rule 26(a)(1) on February
13 15, 2023.

14 **B. DOCUMENTS**

15 A number of what the Parties expect to be the relevant documents were previously exchanged
16 by the parties in connection with the Florida arbitration proceedings initiated by Sure Sports prior to
17 the filing of the bankruptcy. The parties agreed to cooperate to use the previously produced
18 documents in this action to avoid duplication of effort, and to supplement the existing productions as
19 necessary.

20 **1. Discovery by Plaintiff**

21 Plaintiff believes that the discovery needed in this case is relatively targeted and
22 circumscribed. Because there is a single substantive legal claim, based on the Miller Ayala Act,
23 discovery can be targeted to the facts that are relevant to the elements of the Miller Ayala Act that are
24 alleged in the Complaint: namely, whether Sure Sports provided "financial services" within the
25 meaning of the Act with respect to agreements entered between Kane and Sure Sports when Kane
26 was a California resident; and the amounts of compensation received by Sure Sports pursuant to those
27 agreements.
28

1 Plaintiff expects to need the following categories of documents, to the extent not already fully
2 produced in connection with the arbitration: documents and communications relating to all loans
3 arranged/brokered/underwritten by Sure Sports on behalf of Kane; all communications relating to
4 Kane; all payments received by Sure Sports relating to the California loans; Sure Sports marketing
5 and/or policy documents describing the nature of Sure Sports services.

6 **2. Discovery by Defendant**

7 Defendant believes that the discovery needed in this case will be specifically related to
8 communications and documents exchanged between Kane and: (1) his personal representatives,
9 including, but not limited to, Kane's agent, manager, and financial advisors, and (2) other third
10 parties involved in the formation of the business relationship between Kane and Sure Sports, for the
11 purpose of determining how the relationship was formed (i.e. who came to who first). Documents
12 needed will be focused on the issue of how the loans entered into and received by Kane came to
13 existence, the purpose of obtaining such loans, and Sure Sports role (including, but not limited to,
14 services provided) with regard to such loans.

15 Defendant will also require discovery of documents pertaining to: (i) Kane's financial
16 situation at the time of entering such loans in order to determine whether any fraud or other
17 intentional misconduct was committed by Kane in obtaining such loans and/or seeking Sure Sports'
18 services with regard to such loans, and (ii) proof of any payments made by Kane to Defendant
19 pursuant to the Underwriting Agreements.

20 **C. WRITTEN DISCOVERY**

21 **1. Discovery by Plaintiff**

22 Plaintiff expects to serve a limited number of targeted interrogatories and requests for
23 admission, primarily in order to establish certain elements that are undisputed, such as Sure Sports'
24 awareness of Kane's status as a California athlete during the relevant period.

25 **2. Discovery by Defendant**

26 Defendant expects to serve interrogatories and requests for production in order to establish the
27 actuality of Kane's financial situation at the time of requesting the loans, the manner and/or method
28 pertaining to Kane's request for such loans, the level of any third party involvement relating to

PARTIES' JOINT CASE MANAGEMENT STATEMENT

1 Kane's obtainment of such loans, and proof of any payments made by Kane to Defendant pursuant to
2 the Underwriting Agreements. Defendant also expects to serve interrogatories and requests for
3 production (as applicable) relative to the elements of the claim of this action; namely, any such
4 discovery that may be used to dispute the application of the Miller Ayala Act to Sure Sports'
5 provision of services.

6 **D. DEPOSITIONS**

7 **1. Discovery by Plaintiff**

8 Plaintiff expects to take the following depositions: a 30(b)(6) deposition of Sure Sports;
9 potentially additional depositions of specific Sure Sports personnel, if necessary based on 30(b)(6)
10 deposition.

11 **2. Discovery by Defendant**

12 Defendant expects to take the following depositions: Evander Kane; Tony Chiricosta; other
13 representatives of Kane (i.e. Kane's agent, manager, and/or other parties involved in assisting Kane
14 obtain loans and/or familiar with Kane's financial situation)

15 **E. EXPERT WITNESSES**

16 Plaintiff expects to present a single expert, on issues of athlete agent regulations and laws, and
17 the purpose and scope of the Miller Ayala Act specifically.

18 Defendant reserves the right to present a single expert witness for rebuttal purposes and/or for
19 the purpose of discussing the intent athlete agent regulations and laws, including, but not limited to,
20 the Miller Ayala Act.

21 **F. ELECTRONICALLY STORED INFORMATION**

22 The parties do not presently expect any complex issues relating to the production of ESI in
23 this matter. ESI consists of a relatively limited volume of email communications and attachments,
24 and personal and/or financial information stored within Defendant's client database.

25 **G. CONFIDENTIAL INFORMATION**

26 The Parties intend to enter into a stipulated protective order for the protection of confidential
27 information, based on the Northern District Model Order, and are presently meeting and conferring
28 regarding the terms of the order.

1 **III. DISCOVERY AND TRIAL SCHEDULE**

2 **A. PLAINTIFF'S POSITION**

3 Plaintiff requests a trial date in December 2023, or the next available date thereafter on the
4 Court's trial schedule.

5 Plaintiff believes that pre-trial and trial deadlines consistent with the court's Model Trial
6 Scheduling Order will be workable with a trial date as early as December 2023.

7 Plaintiff's counsel is presently available for trial at any time in the Fall of 2023 or the first
8 half of 2024.

9 **B. DEFENDANT'S POSITION**

10 Defendant requests a trial in June 2024, or the next available date thereafter on the Court's
11 trial schedule. Once the trial date is established, the parties may meet and confer in order to solidify
12 pre-trial and trial deadlines consistent with the court's Model Trial Scheduling Order.

13
14 DATED: May 19, 2023

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16 By: 

17 _____
GEORGE CHIKOVANI
Special Counsel for FRED HJELMESET,
Trustee in Bankruptcy

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19 HEITNER LEGAL, PLLC

20 By: /s/ Allan Wilmot

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ALLAN WILMOT
Pro Hac Vice
Attorney for Defendant